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FOUNDED 1866

October 17, 2016

By Hand Delivery And ECFS

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *AT&T Corp. v. Great Lakes Communications Corp.*, Docket No. 16-170, File
No. EB-16-MD-001

Dear Ms. Dortch:

AT&T Corp. ("AT&T"), on behalf of itself and Great Lakes Communication Corp. ("GLCC") (together with GLCC, the "Parties"), submits for filing the **Public Version** of the Parties' Joint Statement of Stipulated Facts, Disputed Facts, Key Legal Issues, and Discovery and Scheduling. Consistent with the Commission's rules and the June 2, 2016 Protective Order entered by the Commission Staff, the Parties have redacted all confidential and highly confidential information from the **Public Version**, which AT&T is filing by hand and ECFS.¹

AT&T is also filing by hand with the Secretary's office hard copies of both the **Highly Confidential** and **Confidential Versions** of the submission. In addition, electronic courtesy copies are also being provided to the Commission's Enforcement Bureau.

Please contact me if you have any questions regarding this matter.

¹ Counsel for GLCC has reviewed this letter and represented to counsel for AT&T that it is acceptable to GLCC.



Marlene H. Dortch
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Sincerely,



James F. Bendernagel, Jr.
Counsel for Complainant AT&T Corp.

Enclosures

cc: Joseph P. Bowser, Counsel for Defendant
G. David Carter, Counsel for Defendant
Lisa Griffin, FCC
Anthony DeLaurentis, FCC
Sandra Gray-Fields, FCC
Christopher Killion, FCC

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
202-457-3090**

Complainant,

File No. EB-16-MD-001

v.

**GREAT LAKES COMMUNICATION CORP.
1501 35th Ave W.
Spencer, IA 51301
712-580-4700**

Defendant.

**JOINT STATEMENT OF STIPULATED FACTS,
DISPUTED FACTS, KEY LEGAL ISSUES,
AND DISCOVERY AND SCHEDULING**

AT&T Corp. (“AT&T”) and Great Lakes Communication Corp. (“Great Lakes” or “GLCC”) (collectively, the “Parties”), in accordance with the Federal Communication Commission’s (the “Commission”) August 19, 2016 Notice of Formal Complaint (the “Notice”) and Sections 1.732(g), 1.733(b)(1)(v), 1.733(b)(2) of the Commission’s rules, 47 C.F.R. §§ 1.732(g), 1.733(b)(1)(v), and 1.733(b)(2), respectfully submit the following Joint Statement of Stipulated Facts, Disputed Facts, and Key Legal Issues. In addition, in Section IV below, the Parties provide their Joint Statement on Discovery and Scheduling in accordance with the Notice and Section 1.733(b)(1)(i)-(iv) of the Commission’s rules, 47 C.F.R. §§ 1.733(b)(1)(i)-(iv).

The Parties have defined stipulated facts to be facts upon which both Parties agree and disputed facts to be facts upon which both Parties do not agree, but the inclusion of any fact as a stipulated fact or disputed fact does not constitute an admission by either of the Parties that the

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fact is relevant or material to the legal issues in dispute. Moreover, the stipulated facts and disputed facts listed below are not meant to address comprehensively every fact that has been raised by the Parties in this case, but rather are meant to identify central facts upon which the Parties agree or disagree. Where the Parties agree, the stipulated facts are presented as organized below within fact clusters that one or both Parties claim are relevant to key issues in this case. The absence of a particular fact in the lists below should thus not be construed as an admission that any such fact is irrelevant or insignificant. Neither of the Parties waive the right to rely on or assert a fact that is not included in this stipulation. The Parties stipulate to these facts for purposes of this proceeding only.

I. STIPULATED FACTS

A. The Parties And Non-Parties

1. AT&T is a New York corporation that provides communications and other services, and has its principal place of business in Bedminster, New Jersey.
2. AT&T is a long-distance carrier (“interexchange carrier” or “IXC”).
3. GLCC is an Iowa corporation with its principal place of business in Spencer, Iowa.
4. GLCC is a competitive local exchange carrier (“CLEC”) that operates exclusively in the State of Iowa.
5. For purposes of the tariffed switched access services at issue in this proceeding, GLCC is operating as a common carrier that is subject to the Communications Act (the “Act”), 47 U.S.C. §§ 151 *et seq.*
6. Joshua D. Nelson and his parents founded GLCC in 2005.
7. GLCC’s Chief Executive Officer is Joshua D. Nelson.
8. GLCC’s President is Kellie Beneke.
9. In 2005, GLCC received authorization from the Iowa Utilities Board (the “IUB”)

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to provide telecommunications service in Lake Park, Iowa and Milford, Iowa.

10. In 2014, GLCC received authorization from the IUB to provide telecommunications service in Spencer.

11. GLCC owns and operates a switch located in Spencer.

12. Qwest Corporation d/b/a CenturyLink QC (“CenturyLink”) is a Louisiana corporation with its principal place of business in Monroe, Louisiana.

13. CenturyLink is an incumbent local exchange carrier (“ILEC”) operating in various locations in the United States, including the State of Iowa.

14. CenturyLink has the lowest rates for switched-access service of any price-cap ILEC in the State of Iowa.

15. CenturyLink has filed an interstate tariff with the Commission that purports to govern the terms of its service (“CenturyLink FCC Tariff No. 11”).

16. Iowa Network Services, Inc. (“INS”) is an Iowa corporation with its principal place of business in West Des Moines, Iowa.

17. INS is an intermediate carrier that provides, among other services, Centralized Equal Access (“CEA”) service.

18. INS has filed an interstate tariff with the Commission that purports to govern the terms of its service (“INS FCC Tariff No. 1”).

19. As it pertains to this proceeding, AT&T hands its GLCC-bound traffic to INS at INS’s tandem switch in Des Moines, Iowa, and the calls are then transported over INS’s fiber network to Spencer.

B. Procedural History And Related Proceedings

20. In an Order dated March 3, 2015, the United States District Court for the Northern District of Iowa (the “District Court”) dismissed without prejudice two of AT&T’s Counterclaims in the underlying litigation pursuant to the primary jurisdiction doctrine. Order

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on Report & Rec., *Great Lakes Commc'n Corp. v. AT&T Corp.*, No. 13-04117, 2015 WL 897876, *7 (N.D. Iowa Mar. 3, 2015) (dismissing Counts II and III “without prejudice pursuant to the primary jurisdiction doctrine”), *aff’g*, Report & Rec., 2014 WL 2866474, **16, 18 (N.D. Iowa June 24, 2014) (“Count III . . . should be referred to the FCC pursuant to the primary jurisdiction doctrine”).

21. In an Order dated June 29, 2015, the District Court referred three issues to the Commission pursuant to the primary jurisdiction doctrine.

22. In a February 2, 2016 Letter Ruling, the Commission ordered AT&T to file a Formal Complaint addressing all issues dismissed and/or referred by the District Court.

23. AT&T filed a Formal Complaint on August 16, 2016 that initiated the above-captioned proceeding.

C. Access Stimulation

24. GLCC is engaged in “access stimulation” as defined under the Commission’s rules.

25. “Access stimulation” refers to a practice where a local exchange carrier (“LEC”) enters into relationships with entities that generate high volumes of long-distance calls, such as conference-calling or chat-line companies, and then shares with those companies the switched-access revenue obtained from the long-distance carriers for terminating the calls to the conference-calling or chat-line companies.

26. Prior to August 2012, GLCC did not serve any local exchange or Internet customers with whom GLCC did not have a revenue-sharing agreement.

27. As of July 2014, GLCC had 541 customers with whom GLCC did not have a revenue-sharing agreement, approximately 400 of which received only broadband Internet services from GLCC. Thus, at that time, GLCC provided local exchange service to over 100 customers with whom GLCC did not have a revenue-sharing agreement.

D. GLCC's Tariffs And CenturyLink's Tariff

28. At its inception in 2005, GLCC filed a tariff with the Commission governing its provision of switched-access service ("GLCC FCC Tariff No. 1").

29. GLCC FCC Tariff No. 1 defines "Switched Access Service" as follows:

Switched Access Service, which is available to customers for their use in furnishing their services to end users, provides a communication path between a customer premises and an end user's premises. It provides for the use of common terminating, switching and trunking facilities and common subscriber plant of the Telephone Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer premises, and to terminate calls from a customer premises to an end user's premises in the LATA where it is provided.

CenturyLink FCC Tariff No. 11 defines "Switched Access Service" as follows:

Switched Access Service, which is available to customers for their use in furnishing their services to end users, provides a two-point electrical communications path between a customer's premises and an end user's premises. It provides for the use of terminating, switching, transport facilities and common subscriber plant of the Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer's premises, and to terminate calls from a customer's premises to an end user's premises in the LATA where it is provided.

30. GLCC FCC Tariff No. 1 and CenturyLink FCC Tariff No. 11 define "End User" as "any customer of an interstate or foreign telecommunications service that is not a carrier."

31. GLCC FCC Tariff No. 1 and CenturyLink FCC Tariff No. 11 define "Customer(s)" as "any individual [or] entity which subscribes to the services offered under this [T]ariff, including [both] Interexchange Carriers (ICs) [and] [E]nd [U]sers."

32. GLCC FCC Tariff No. 1, which was modeled from typical incumbent local exchange carrier tariff structure when it was prepared by consultants in 2005, offered "Direct-Trunked Transport," which was defined as "transport from the serving wire center to the end office or from the serving wire center to the access tandem on circuits dedicated to the use of a single customer." CenturyLink FCC Tariff No. 11 offers "Direct[-]Trunked Transport," which is defined as follows:

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(1) the transport between the serving wire center of the customer's premises and a Company end office, Company Hub or Company access tandem or between a Company Hub and a Company end office or Company access tandem on circuits dedicated to the use of a single customer, without switching at the Company access tandem or, (2) the transport with Tandem Signaling Information (i.e., CIC and 0ZZ codes or equivalent SS7 parameters) between the serving wire center of the customer-provided tandem premises and a Company end office subtending the customer-provided tandem or a Company Hub or between a Company Hub and a Company end office subtending the customer-provided tandem.

33. After the Commission issued its *Connect America Order* in November 2011, Report and Order, *In re Connect America Fund*, 26 FCC Rcd. 17663 (2011), GLCC filed a new tariff with the Commission on January 11, 2012 ("GLCC FCC Tariff No. 2"), which became effective on January 26, 2012.

34. GLCC's FCC Tariff No. 2 was revised on July 3, 2014, and took effect 15 days later on July 18, 2014. GLCC FCC Tariff No. 2 was next revised on July 16, 2015, and took effect 15 days later on July 31, 2015. GLCC FCC Tariff No. 2 was revised again on July 15, 2016, and took effect 15 days later on July 30, 2016.

35. GLCC FCC Tariff No. 2 defines "Switched Access Service" as follows:

Switched Access Service provides for the use of switching and/or transport facilities or services to enable a Buyer to utilize the Company's Network to accept Calls or to deliver Calls. Switched Access Service may be provided via a variety of means and facilities, where available, to be determined by the Company at its sole discretion.

36. GLCC FCC Tariff No. 2 defines "Buyer" as an "Interexchange Carrier utilizing the Company's Access Service to complete a Call to or from End Users. The Buyer is responsible for the payment of charges for any service it takes from the Company, and compliance with the terms and conditions of this Tariff." "End User" is defined as "any Customer of an Interstate or Foreign Telecommunications Service that is not a carrier. ... An End User must pay a fee to the Company for telecommunications service."

37. GLCC FCC Tariff No. 2 defines a "Customer of an Interstate or Foreign Telecommunications Service" as "any person or entity who sends or receives an interstate or

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foreign Telecommunications service transmitted to or from a Buyer across the Company's Network, provided that the person or entity must pay a fee to the Company for telecommunications service."

38. GLCC FCC Tariff No. 2 defines "Customer" to include "conference call providers, chat line providers, calling card providers, call centers, help desk providers, and residential and/or business service subscribers."

39. GLCC FCC Tariff No. 2 does not contain a provision for "End User Access Service," or any other service that an end user could subscribe to under, and purchase out of, the tariff.

40. GLCC FCC Tariff No. 2 defines "Access Service" as "includ[ing] services and facilities provid[ing] for the origination or termination of any interstate or foreign Telecommunication regardless of the technology used in transmission."

41. GLCC FCC Tariff No. 2 adopts the definition of "Telecommunications" set forth in the Act: "The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received."

42. GLCC FCC Tariff No. 2 does not contain the "Direct-Trunked Transport" provision found in GLCC FCC Tariff No. 1. As a consequence, GLCC FCC Tariff No. 2 has no provision for a direct connection arrangement.

43. GLCC FCC Tariff No. 2 contains the following dispute provision:

- (a) All bills are presumed accurate, and shall be binding on the Buyer unless written notice of a good faith dispute is received by the Company. For the purposes of this Section, "notice of a good faith dispute" is defined as written notice to the Company's contact (which is listed on every page of this Tariff) within a reasonable period of time after the invoice has been issued, containing sufficient documentation to investigate the dispute, including the account number under which the bill has been rendered, the date of the bill, and the specific items on the bill being disputed. A separate letter of dispute must be submitted for each and every individual bill that the Buyer wishes to dispute.

- (b) Prior to or at the time of submitting a good faith dispute, Buyer shall tender payment for any undisputed amounts, as well as payment for any disputed charges relating to traffic in which the Buyer transmitted interstate telecommunications to the Company's network.

E. GLCC's Relationship With AT&T

44. This dispute relates to interstate switched access services that GLCC asserts it has provided to AT&T as a long-distance carrier.

45. The great majority of GLCC's traffic is long-distance traffic that is terminated to high-volume conference-calling and chat-line companies (the "Companies").

46. The pertinent aspects of the routing of such calls are as follows: (1) AT&T carries the calls over its long-distance network and delivers them to INS's tandem switch in Des Moines; (2) the calls are transported over INS's fiber network from Des Moines to GLCC's point of interconnection ("POI") in Spencer (a total of approximately 133 miles); (3) GLCC transports the calls about one mile to its nearby switch in Spencer; and (4) GLCC's switch in Spencer then directs the calls to GLCC's facilities in Lake Park, where the calls are terminated to the equipment of the Companies associated with the called number.

47. Beginning with its March 2012 invoice to AT&T, GLCC has billed AT&T on a monthly basis pursuant to GLCC FCC Tariff No. 2.

48. AT&T paid GLCC's March 2012 invoice, but since then AT&T has not paid any portion of any GLCC invoices.

49. GLCC's monthly bills to AT&T accurately reflect the volume of traffic at issue in this case.

F. GLCC's Relationships With The Companies

50. GLCC's relationships with the Companies generally are governed by two agreements: an agreement titled "Telecommunications Service Agreement ("TSA"); and an agreement titled "Marketing Agreement."

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51. From the beginning of the dispute period until May 2015 (when discovery in the underlying litigation concluded), GLCC billed each of the Companies monthly for certain services provided under the TSAs, and each of the Companies paid those billed amounts.

52. The Marketing Agreements are revenue-sharing agreements as defined by 47 C.F.R. § 61.3(bbb).

53. Under its Marketing Agreement with **[[BEGIN HIGHLY CONFIDENTIAL]]**
[REDACTED]
[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

54. Under its Marketing Agreements with **[[BEGIN HIGHLY CONFIDENTIAL]]**
[REDACTED]
[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

55. **[[BEGIN CONFIDENTIAL]]** [REDACTED]
[REDACTED] **[[END CONFIDENTIAL]]**

56. GLCC's services to the Companies are provided pursuant to the TSAs.

57. GLCC billed the Companies consistent with Exhibit A to the TSAs.

58. The Companies paid fees to GLCC for the services provided under the TSAs.

59. **[[BEGIN CONFIDENTIAL]]** [REDACTED]
[REDACTED]
[REDACTED] **[[END CONFIDENTIAL]]**

G. Other

60. **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]
[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

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61. In proceedings before the District Court, GLCC's proffered regulatory expert testified that **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[[END HIGHLY

CONFIDENTIAL]] Also, in his Declaration in this case, GLCC's CEO Josh Nelson stated that "I have reached numerous mutually acceptable business arrangements with other carriers under which Great Lakes terminates long-distance traffic pursuant to contract."

62. Pursuant to INS FCC Tariff No. 1, INS currently bills AT&T \$0.00896 per minute to deliver the long-distance traffic at issue from INS's tandem switch in Des Moines to GLCC's POI to Spencer.

63. AT&T has not paid INS's charges for Great Lakes-related traffic since approximately July 2013.

II. DISPUTED FACTS

A. AT&T's Disputed Facts

1. The Parties

1. For the purposes of this proceeding, AT&T is a purchaser of services, and not a common carrier providing services.

2. **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[[END
CONFIDENTIAL]]

3. **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[[END CONFIDENTIAL]]

2. The IUB Proceedings

4. In 2009, the IUB found after a full evidentiary hearing that GLCC had "failed to

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comply with the terms and conditions of [its] own intrastate access tariffs, so the calls in question were not subject to access charges and refunds and credits are required.” Specifically, the IUB held that GLCC’s FCPs were not “end users” under GLCC’s intrastate tariff. The IUB further noted that GLCC had not collected the charges that end users are supposed to pay under that tariff. The IUB’s findings as to GLCC were very similar to the findings made by the Commission with regard to another Iowa LEC engaged in the same practices in the *Farmers* proceeding.

5. In criticizing GLCC’s access stimulation schemes, the IUB explained that “[i]f access rates are set at a level intended to recover the costs of providing access services, then a carrier’s willingness to share a substantial portion of its access revenue with a [FCP] is evidence that the carrier’s rates are too high for the volume of traffic being terminated.” The IUB also announced that it would issue new rules “intended to prevent this abuse in the future.” The IUB stated:

[Its] concern is that in circumstances like those presented in this case where (1) a carrier’s access rates are set with reference to a relatively low historical volume of access services, (2) the current and future volume of those services is considerably greater, (3) the incremental cost of increased traffic is less than the charge per minute, (4) the carrier is willing to share a substantial portion of its access revenues, and (5) the carrier has substantial market power, even monopoly power, over those services, then the result is an unreasonable rate or service arrangement, in the absence of any other factors.

The IUB further stated that it would “initiate a subsequent proceeding asking Great Lakes ... to show cause why [its] certificate[], issued pursuant to Iowa Code § 476.29, should not be revoked.”

6. While the IUB ultimately did not revoke GLCC’s certificate, the IUB did find significant problems in GLCC’s operations. The IUB determined that for most of GLCC’s existence, it “has never provided any services that are considered to be components of local exchange service.” Although GLCC told the IUB repeatedly that it would construct and operate

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local network facilities to provide customers in certain Iowa communities with competitive local telephone services, the IUB found those representations to have been “false.” In particular, the IUB noted that until very recently, GLCC had “no outside plant or facilities. Great Lakes has never provided access to [a] local exchange network and no person is able to make an outbound call or place a local exchange call through Great Lakes.” The IUB concluded that the record “show[ed] that GLCC failed to provide local exchange service in accordance with its certificate and tariff.”

7. In discussing the cause of these failings, the IUB faulted GLCC’s management, finding that, “[i]n the end, Great Lake’s 2006 claim that it was providing local exchange service in [a specified Iowa local exchange] was either a knowing falsehood or evidence that Great Lakes lacks the managerial ability to understand and provide any of the services it claimed to offer [C]ompany management that makes false or incompetent statements to the Board is not providing adequate service.” The IUB also found that management’s failure to understand the “requirement that [Great Lake’s] tariffs accurately reflect the exchanges where Great Lakes is attempting to provide service demonstrates insufficient managerial ability to provide service in accordance with its tariffs; at worst, GLCC’s management failures indicate a willingness to misrepresent its actual business plan to the Board.” Finally, the IUB determined, in the words of the Magistrate Judge in the District Court proceeding, that “GLCC had not changed certain practices between 2009 and 2012 despite being directed to do so in the 2009 Order.”

3. GLCC’s Tariffs

8. The terms and descriptions of switched-access service in GLCC FCC Tariff No. 1 (but not the rates) were generally consistent with the terms and descriptions of switched-access service in CenturyLink FCC Tariff No. 11.

9. Unlike GLCC FCC Tariff No. 1, GLCC FCC Tariff No. 2 does not track the terms of CenturyLink FCC Tariff No. 11.

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10. As revised, GLCC FCC Tariff No. 2 prohibits GLCC from assessing switched-access charges on an IXC, unless the IXC is a “Buyer” of GLCC’s services. And an IXC cannot be a “Buyer” unless GLCC’s “Customer[s],” *i.e.*, the FCPs, have paid GLCC a fee for a telecommunications service, and thus qualify as “End User[s]” under the tariff. GLCC’s CEO acknowledged that GLCC FCC Tariff No. 2 requires that, for an entity to be an “End User” for purposes of assessing switched-access charges on calls to that entity, such entity must pay the GLCC a fee for interstate telecommunications services.

11. GLCC FCC Tariff No. 1 and CenturyLink FCC Tariff No. 11 require end users to (1) subscribe to “End User Access Service,” as well as local exchange service under their local tariffs, and (2) charge a specified tariffed rate to the end user for the tariffed End User Access Service.

12. While GLCC FCC Tariff No. 1 was in effect, AT&T and GLCC exchanged traffic pursuant to negotiated settlement agreements.

4. GLCC’s Relationship With the FCPs

13. **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

14. From January 2012 through July 2014, GLCC paid its FCPs **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[REDACTED]

[REDACTED] **[[END HIGHLY**

CONFIDENTIAL]]

15. [[BEGIN HIGHLY CONFIDENTIAL]]

[[END HIGHLY

CONFIDENTIAL]]

16. [[BEGIN HIGHLY CONFIDENTIAL]]

[[END HIGHLY CONFIDENTIAL]]

17. For the period from January 2012 through June 2014, [[BEGIN HIGHLY
CONFIDENTIAL]]

[[END HIGHLY CONFIDENTIAL]]

18. [[BEGIN HIGHLY CONFIDENTIAL]]

[[END HIGHLY CONFIDENTIAL]]

19. [[BEGIN HIGHLY CONFIDENTIAL]]

[[END HIGHLY CONFIDENTIAL]]

20. [[BEGIN HIGHLY CONFIDENTIAL]] [REDACTED]

[REDACTED]

[REDACTED] [[END HIGHLY CONFIDENTIAL]]

21. [[BEGIN HIGHLY CONFIDENTIAL]] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[[END HIGHLY
CONFIDENTIAL]]

22. GLCC's corporate representatives testified that [[BEGIN HIGHLY
CONFIDENTIAL]] [REDACTED]

[REDACTED] [[END HIGHLY CONFIDENTIAL]]

23. GLCC has not billed any of its FCPs for any services other [[BEGIN HIGHLY
CONFIDENTIAL]] [REDACTED] [[END
HIGHLY CONFIDENTIAL]]

24. The FCPs have equipment located at or near GLCC's facilities.

25. Under Iowa law, taxes are owed on the sale of "all telecommunications service," and the definition of "telecommunications service" pertinent to that tax is essentially the same as the definition set forth in GLCC FCC Tariff No. 2 and the Act.

26. [[BEGIN CONFIDENTIAL]] [REDACTED]

[REDACTED] [[END CONFIDENTIAL]]

27. [[BEGIN HIGHLY CONFIDENTIAL]] [REDACTED]

[REDACTED]

[REDACTED]

[[END HIGHLY CONFIDENTIAL]]

28. GLCC is required to report to the Commission its interstate telecommunications revenues – including “End User ... Revenue Information.” The Commission uses the reported revenues to determine whether a telecommunications provider is required to contribute to the federal Universal Service Fund.

29. **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]
[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

30. **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

31. **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

32. **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

33. **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[[END

HIGHLY CONFIDENTIAL]]

4. GLCC's Relationship With AT&T

34. GLCC first began to bill AT&T for switched access services in late 2005 or early 2006.

35. The volume of traffic that AT&T transmitted to or from GLCC increased quickly after GLCC began operations.

36. Upon investigation of this rapid increase in traffic, AT&T sued GLCC and other carriers in Iowa federal court in early 2007. A central issue in that case was whether GLCC had in fact provided interstate switched access service consistent with the terms of its tariff and with the Commission's rules regarding switched access service.

37. In late 2007, AT&T reached a settlement with GLCC ("2007 Settlement") pursuant to which [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

38. The 2011 Settlement Agreement stated that [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]]

39. Following the issuance of the *Connect America Order*, GLCC began billing AT&T for access charges in reliance on GLCC FCC Tariff No. 2.

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40. Initially, GLCC's charges to AT&T included both (i) end office switching charges and (ii) transport charges, which were billed using the sole "tandem" option in GLCC's revised tariff.

41. Since early 2012, GLCC has billed AT&T approximately **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** in transport charges, which included in some periods 133 miles of distance-sensitive charges for purportedly transporting calls from Des Moines to Spencer. AT&T was simultaneously being billed a very high per-minute charge by INS for that same service. On summary judgment, the District Court held that GLCC's transport charges were improper under the terms of its tariff and the Commission's precedents.

42. In early 2012, AT&T requested a direct connection arrangement with GLCC. GLCC refused this request, **[[BEGIN HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]**

43. GLCC has since taken the position that **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**

44. On May 2, 2012, AT&T notified GLCC that it did not believe that GLCC was providing service consistent with its tariff and that it would be withholding payment on GLCC's

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bills pending resolution of the disputes. At no point since that time has AT&T assented to GLCC's continued provision of the services for which it has been billed and that are in dispute in this proceeding.

5. Direct Connection Cost Savings

45. For high access traffic volumes, carriers in many cases implement a direct connection arrangement because its flat-rate (rather than per-minute) pricing usually offers the most efficient, least costly way to route large volumes of traffic to a LEC.

46. CenturyLink typically delivers traffic at the volumes at issue in this case via a direct connection arrangement.

47. GLCC handles significantly higher volumes of traffic with considerably less switching and related facilities than does CenturyLink.

48. GLCC's proffered regulatory expert testified that CenturyLink terminated approximately one billion minutes of long distance calls per year to all of its end offices throughout the State of Iowa.

49. Between 2012 and 2015, CenturyLink served more than 50 times the number of access lines in the State of Iowa than GLCC served.

50. CenturyLink uses a large array of network equipment and facilities, including numerous end office switches (as well as local loops) to connect to its customers. CenturyLink has about 22 stand-alone end office switches and 28 host end office switches (plus tandem switches and many remote switches) in the State of Iowa.

51. Because GLCC has failed to offer AT&T a direct connection arrangement at the rates that CenturyLink charges for such a service, AT&T does not have a direct connection with GLCC's switch in Spencer and instead hands off its traffic to an intermediate carrier known as INS.

52. The Commission has described INS, and its role in routing long distance traffic

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to small carriers with low traffic volumes as follows:

[T]o carry long-distance traffic efficiently to remote local exchanges in Iowa, about 135 rural carriers formed a [Centralized Equal Access (“CEA”)] provider called ... INS. They developed this arrangement in part because the costs of hauling long-distance traffic to and from each of the many small carriers were high, and competing IXC’s found it too “expensive ... to provide their own facilities to each of these small exchanges, given the relatively low amount of [long distance] traffic they generate IXC’s generally [deliver traffic] by interconnection with the INS access tandem in Des Moines. INS then delivers the long-distance traffic received from IXC’s over its fiber ring to one of sixteen [Points of Interconnection (“POIs”)] located across the state. At the POIs, the Iowa LECs connect with the INS network and transport interstate switched access traffic between their POIs and their end office switches.

53. By failing to offer AT&T a direct connection arrangement at the rates that CenturyLink charges for such a service, GLCC has forced AT&T (and therefore its customers) to pay significant amounts for INS’s intermediate service.

54. GLCC has entered into an agreement **[[BEGIN HIGHLY CONFIDENTIAL]]**

[REDACTED]

[REDACTED]

[[END HIGHLY CONFIDENTIAL]]

55. GLCC lists INS in the Local Exchange Routing Guide as the tandem carrier that IXC’s should route through to terminate traffic to GLCC.

56. INS has billed AT&T for approximately **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[[END CONFIDENTIAL]] in access charges on calls transmitted to or from GLCC during the relevant period.

57. If GLCC had agreed to provide AT&T with a direct connection arrangement, AT&T could have avoided INS’s expensive services and delivered the traffic at issue to Spencer via a less costly means.

58. Under CenturyLink’s tariff, the monthly rate for a direct connection arrangement between Des Moines and Spencer would be approximately **[[BEGIN CONFIDENTIAL]]**

[REDACTED] [[END CONFIDENTIAL]] per DS3 on a flat-rate basis, which given the minutes at issue would result in per-minute rates that range between [[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]]

59. Had GLCC provided AT&T with a direct connection arrangement at the rates CenturyLink charges for such a service, the savings to AT&T over the period of this dispute would range from approximately **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**

60. GLCC's proffered regulatory expert's criticisms of Mr. Habiak's estimate of these savings are riddled with errors.

B. GLCC's Disputed Facts

1. From January 2012 through June 2014, AT&T collected over **[[BEGIN
HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]** in fees for carrying wholesale traffic to Great Lakes that Great Lakes terminated for AT&T's benefit.

2. GLCC billed the Companies consistent with the TSAs (including Exhibit A thereto) and the quantities of services GLCC provided to the Companies.

3. To complete the [[**BEGIN CONFIDENTIAL**]] [REDACTED] [[**END**
CONFIDENTIAL]] calls that GLCC has terminated for AT&T's benefit since this dispute
arose, GLCC necessarily had to provide, and did provide, the Companies with
telecommunications services.

4. GLCC did not gratuitously provide the Companies with telecommunications service pursuant to the TSAs between GLCC and the Companies.

5. GLCC and the Companies agree in their respective TSAs that **[[BEGIN
HIGHLY CONFIDENTIAL]]** [REDACTED]
[REDACTED]
[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

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6. The parties to these TSAs also acknowledge and agree that **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]
[REDACTED]
[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

7. **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

8. **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

9. Because AT&T stopped paying GLCC in March 2012, a *de minimis* portion of the funds that GLCC has remitted to the Companies were derived from access charges paid by AT&T to GLCC. Rather, the great majority of those funds were derived from the charges that GLCC collects pursuant to its IP-termination services agreements that it has entered into with various carriers.

10. AT&T's witness in this proceeding, Mr. Habiak, has testified under oath that a CLEC "has no obligation to establish a 'direct' connection with AT&T Corp. or any other IXC, and no obligation to route traffic over such a connection if there were one."

11. **[[BEGIN CONFIDENTIAL]]** [REDACTED]
[REDACTED]

[[END

CONFIDENTIAL]]

12. AT&T has not shown that CenturyLink had available capacity sufficient to provide AT&T with direct-trunked transport to GLCC's end office in Spencer, Iowa.

13. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

14. AT&T has not identified or described the financial or technical details of the direct-trunked transport arrangement it claims to have been entitled to from GLCC. AT&T does not describe the number of trunks it would commit to, the specific route it would prefer to use, or even who it would purchase transport facilities from to create the hypothetical direct-trunked transport circuit that would serve as the basis for its estimated savings.

15. Common transport between a tandem and a sub-tending end office is shared by all interexchange carriers ("IXCs") that terminate (or originate) traffic to that end office. The very nature of common transport places both the operational and financial responsibility for properly engineering those shared facilities on the LEC (in this case GLCC). To the extent GLCC procures too much transport capacity relative to the traffic it ultimately receives, its costs per minute of use ("MOU") go up (perhaps dramatically). At the same time, to the extent it doesn't procure enough transport resources for the traffic from/to the IXCs it serves, traffic blockage occurs (potentially in conflict with Commission requirements) and consumer phone calls cannot be completed. All of these underlying contingencies must be managed by GLCC without any commitment from the IXCs as to the timeframe over which they will require transport facilities or the traffic volumes they may demand (*i.e.*, common transport is purchased by IXCs as needed on a per MOU basis without term or volume commitments). These uncertainties create real financial risk and costs that are borne by GLCC.

16. The same risks borne by GLCC in a common transport scenario shift entirely to

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the IXC when the IXC purchases direct-trunked transport. Now, it is the IXC (in this case AT&T) that must ensure it has properly procured and sized the transport facilities between itself and GLCC, and it is AT&T that bears the associated financial and operational risks.

17. Direct-trunked transport services are not purchased (or sold) on a per MOU basis. Instead, AT&T would be required to purchase a certain amount of capacity (*e.g.*, a DS3 or multiple DS3s) based upon the amount of traffic it forecasts between itself and GLCC. Also, in order to achieve the best transport prices, AT&T would likely need to commit to purchasing some level of capacity over some notable term (*e.g.*, 3 to 5 years).

18. Further, AT&T would be subject to special construction charges associated with CenturyLink building additional capacity to meet AT&T's needs. Special construction charges can be material, especially for facilities of the scope required to accommodate AT&T's traffic volumes to GLCC.

19. If AT&T acquired direct-trunked transport service from CenturyLink, AT&T would incur CenturyLink's applicable entrance facility charges.

20. **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[REDACTED]

[[END CONFIDENTIAL]]

21. While GLCC FCC Tariff No. 1 was in effect, AT&T never requested, purchased or used the "Direct-Trunked Transport" service offered in that tariff.

III. KEY LEGAL ISSUES

The parties agree that, in its June 29, 2016, Order, the District Court referred the following issues to the Commission pursuant to the primary jurisdiction doctrine:

1. Whether carriers like GLCC are properly charging "end user" fees to their FCP customers for "telecommunications services," as required under the FCC's rules and GLCC's revised tariff;

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2. In the event that the services provided by GLCC to AT&T, by which calls placed by AT&T's retail customers, as well as those calls delivered by AT&T on a wholesale basis, are delivered to FCPs served by GLCC, do not qualify as a "switched access service" under GLCC's applicable interstate access tariff, whether GLCC is entitled to obtain compensation for these services; and

3. If the answer to the issue in b., above, is yes, what is a reasonable rate for those services.

The parties state that, in light of AT&T's bifurcation of liability and damages pursuant to 47 C.F.R. § 1.722, the Commission need not address issue 3 in the liability phase of this proceeding.

A. AT&T's Key Legal Issues

1. Whether GLCC violated Section 201(b) of the Communications Act, and the Commission's access charge rules for competitive LECs, by failing to offer access service on terms that are functionally equivalent to those tariffed by CenturyLink?

2. Whether GLCC violated Section 201(b) of the Communications Act, and the Commission's access charge rules for competitive LECs, by failing to permit, without unreasonable conditions, AT&T to install direct trunking from AT&T's point of presence to GLCC's end office, thereby bypassing any tandem function.

3. Whether GLCC is properly charging "end user" fees to its FCPs for interstate "telecommunications service," as required under the Commission's rules and GLCC FCC Tariff No. 2.

4. In the event that GLCC violated its access tariff and the Commission's rules, is GLCC entitled to compensation for any services it provided to AT&T, either under alternative state law remedies or some other basis?

B. GLCC's Key Legal Issues

1. Whether the Commission can hold, consistent with the Administrative Procedure Act, for the first time, in an adjudicatory proceeding, and with retrospective effect, that the Commission's definition of a CLEC's "switched exchange access services" requires a CLEC to tariff and provide a direct-trunked transport service, rather than the "tandem switched transport facility (per mile)" that the Commission explicitly provided for in 47 C.F.R. § 61.26(a)(3)(i).

2. Whether the Commission can hold, consistent with the Administrative Procedure Act, for the first time, in an adjudicatory proceeding, without providing public notice and opportunity to comment, and with prospective effect, that the Commission's definition of a CLEC's "switched exchange access services" requires a CLEC to tariff and provide a direct-trunked transport service, rather than the "tandem switched transport facility (per mile)" that the Commission explicitly provided for in 47 C.F.R. § 61.26(a)(3)(i).

3. Whether AT&T's request for a non-tariffed service at non-tariffed rates is precluded by the filed tariff doctrine.

4. Whether a LEC can be held liable for failing to allow an IXC to route its traffic to the LEC's network via a third-party LEC to bypass the FCC-approved Centralized Equal Access ("CEA") provider when the FCC's rules exempt the CEA provider from any duty to provide direct-trunked transport itself.

5. Whether AT&T waived its purported claim for GLCC to provide AT&T a direct connection when it failed to request any such service despite it being tariffed for approximately six years and AT&T having delivered many more minutes to GLCC for termination throughout that time than the minutes AT&T now claims justify a direct connection.

6. Whether, assuming, *arguendo*, that CLECs are somehow required to provide direct interconnection (notwithstanding Section 251 of the Act and the Commission's *Local Competition Order*), Great Lakes satisfied any such requirement through its numerous offers of

such a service to AT&T.

7. Whether the Commission's rules and orders require a CLEC to collect a fee from its customers for a telecommunications service that is specifically denominated as an interstate service for that customer to be considered an end user for purposes of its ability to assess and collect its tariffed access charges.

8. Whether a customer is an end user, and thus a CLEC can assess and collect tariffed access charges, when the customer pays the CLEC for telecommunications services that are interstate in nature, including the termination of interstate telephone calls to the paying customer.

9. Whether a customer is an end user based solely on the precise verbiage in the customer's invoice, such as "DID Monthly Fee," "Internet and Home Phone," "Local Services," "Voice," or "Complete Choice Basic," or whether the customer's end user status is evaluated based on the totality of the circumstances under which the customer receives and pays for a LEC's services.

IV. JOINT STATEMENT PURSUANT TO 47 C.F.R. §§ 1.733(b)(1)(i)-(iv)

Along with their Joint Statement of Stipulated Facts, Disputed Facts, and Key Legal Issues, the Parties hereby provide the following Joint Statement on Discovery and Scheduling. Counsel for the Parties held several telephonic meet and confer conferences regarding discovery and other matters. Concurrently therewith, AT&T prepared a draft of this Statement and the Parties exchanged rounds of comments thereon.

A. Settlement Prospects

1. AT&T's Statement On Settlement.

The Parties held detailed settlement discussions prior to the District Court's June 29, 2015 Order, but those discussions did not result in a settlement agreement. Additional settlement efforts were made earlier this year. Although AT&T remains open to settlement, it does not

believe that efforts by the Commission Staff to assist the parties in settling this dispute would be fruitful at this juncture. Instead, it is AT&T's view that it is important that the Formal Complaint proceeding move forward.

2. GLCC's Statement On Settlement.

As shown in its Answering Submission, GLCC has made repeated efforts to settle this matter, including, without limitation, accepting the terms of AT&T's June 26, 2015 offer, which AT&T then repudiated as unacceptable and incomplete. GLCC has made additional offers to settle this matter since then, each of which AT&T has rejected. **[[BEGIN CONFIDENTIAL]]**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[[END CONFIDENTIAL]]** For its part, GLCC remains open

to settlement.

B. Issues In Dispute

1. AT&T's Issues In Dispute

AT&T's position is that the issues in dispute are set forth in Counts I, II, and III of its Formal Complaint and discussed in AT&T's Legal Analyses in Support of its Formal Complaint.

As to Count I relating to AT&T's direct connection claim, AT&T is not asking the Commission to amend the interconnection obligations of all CLECs under Section 251(a). Rather, AT&T is merely asking the Commission to enforce its existing CLEC access rules, specifically the requirement that, because GLCC is engaged in access stimulation, its services must be "functionally equivalent" to CenturyLink's services. At the very minimum, AT&T asks

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that the Commission enforce its 2008 directive to require GLCC to permit AT&T, without unreasonable conditions to install direct trunks to GLCC's switch and bypass tandem charges. GLCC has no valid defense for its failure to provide, or at the very least, permit a direct connection, and its procedural defenses are meritless.

As to Count II, AT&T contends that GLCC failed to properly bill access on calls to end users that are required to pay GLCC a fee for telecommunications services. The undisputed evidence is that **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[REDACTED] **[[END HIGHLY CONFIDENTIAL]]** None are telecommunications services. Even though GLCC unilaterally issued the bills, GLCC asks the Commission to ignore these facts, and assume that because calls were completed, GLCC "intended" to be paid a fee for providing telecommunications. The evidence, however, proves that the FCPs did not pay GLCC any fees for telecommunications services, in violation of the Commission's rules and GLCC's own tariff.

As to Count III, AT&T has demonstrated that GLCC's alternative state law claims are inconsistent with the law and the Commission's regulatory regime. GLCC's view is that, because the Commission provides CLECs with the option to negotiate contracts, CLECs can rely on state law to recover for interstate access service. But there is no negotiated contract between the parties, and this case presents no questions about the role of state law in enforcing a negotiated agreement between a CLEC and an IXC. Rather, in this case, GLCC elected to file a tariff, and having done so, there are no "alternative" facts in which GLCC can simply pretend that its services were never tariffed or are not subject to the Commission's regulatory regime. As the Commission has stated, there is "no regulatory gap" in its regime that allows GLCC to pursue "alternative damages theories." The District Court, joining virtually all other courts, was entirely correct to dismiss GLCC's alternative state law claims.

2. GLCC's Issues In Dispute

GLCC's position is that the issues in dispute are set forth in its Answering Submission, including its Legal Analysis in support thereof.

On Count I, the Commission has never required CLECs (or any other non-ILEC) to provide another carrier with a direct interconnection to their network, consistent with Section 251 of the Act and the Commission's implementing rules and orders. And in its *Connect America Fund Order*, the Commission made a single change to its CLEC access charge rule, namely, adding paragraph (g) to 47 C.F.R. § 61.26. That single change merely changed *which ILEC* a CLEC engaged in access stimulation must benchmark its rate (defined in 47 C.F.R. § 61.26(a)(5)) for its switched exchange access services (defined in 47 C.F.R. § 61.26(a)(3)). Neither 47 C.F.R. § 61.26(a)(5) nor 47 C.F.R. § 61.26(a)(3) changed in any respect with the *Connect America Fund Order*, and thus AT&T's claim that the Commission silently revised their intent, but not their language, must be rejected. AT&T's requested relief could only be granted with a requisite amendment to the Communications Act and a Commission rule change that complies with the Administrative Procedure Act.

On Count II, it is only by virtue of AT&T's self-serving, tortured reading of GLCC's contracts and invoices that one could conclude that the fees the Companies paid pursuant to their *Telecommunications Service* Agreements with GLCC were for anything *but* GLCC's telecommunications service. The Commission has never adopted, nor could it adopt, such a tortured construction of the commercial relationships between a CLEC like GLCC and its customers. Moreover, even if the Commission were to subscribe to AT&T's tortured canon of construction, which violates basic principles of common law construction of contracts, [[BEGIN

HIGHLY CONFIDENTIAL]]

[[END HIGHLY
CONFIDENTIAL]]

On Count III, the Commission permissively detariffed the provision of CLECs' switched access services, allowing them to provide the service pursuant to contract or state-law contract. Having allowed CLECs and IXC's to enter into commercial agreements governing CLECs' provision of access service, there is no sound policy basis for suggesting that the Commission silently precluded complementary state law modes of recovery, such as *quantum meruit* and unjust enrichment, particularly in cases, like this one, where AT&T is voluntarily attracting substantial volumes of wholesale traffic for which it is being compensated by virtue of receiving GLCC's termination services but then unjustly paying GLCC nothing for that service. Having allowed carriers to privately establish rates, the Commission has not thereby precluded state tribunals (or federal courts applying state law) from filling any gaps or preventing injustice in the event the parties fail to reach a written, executed agreement. Moreover, as one court recently observed, if a service is not access service, the Commission has not regulated it, and thus has not preempted state law modes of recovery for such service.

C. Discovery

1. Depositions

The Parties agree that the proceeding before the District Court resulted in a factual record that includes, among other things, deposition testimony and a significant volume of document productions. The Parties previously agreed that this material could be used in this proceeding. As a result, the Parties believe discovery in the form of depositions is not necessary in this case.

2. Interrogatories And Document Requests

During the Parties' meet and confer process, counsel for the Parties came to the following agreement regarding responses to the Interrogatories, and objections thereto, that each Party served in this proceeding:

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Notwithstanding its objections, AT&T will provide responses to GLCC's Interrogatory Nos. 1, 2 and 4.

Notwithstanding its objections, GLCC will provide responses to AT&T's Interrogatory Nos. 1, 4, 5, 7, 11, 12 and 13.

Both Parties have also agreed to withdraw, without prejudice, the Interrogatories that they served but that are not identified above.

To the extent that each Party concludes that the other Party's responses to the Interrogatories that that Party has agreed to answer are satisfactory, the Parties do not foresee a need for any further written discovery in this case, and therefore do not at this time anticipate issuing any such requests.

D. Schedule For Pleadings And Discovery

The Parties propose that after Commission Staff has had an opportunity to review the parties' submissions, a conference be scheduled to resolve any outstanding discovery issues and to discuss the timing of further briefing.

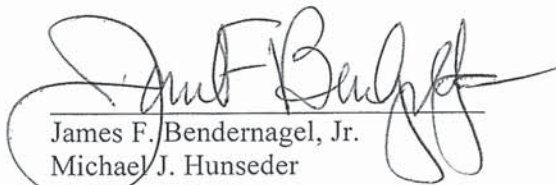
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